











particular subject. Liquid Audio discloses that “[t]he flexible design of the server allows you to send dynamic product and promotional information such as sales price, tour schedule, discounts and coupons; along with the Liquid Track to be received by the Liquid MusicPlayer CD” (Liquid Audio, page U-2, emphasis added). Applicants respectfully submit that the above does not enable one of ordinary skill in the art to dynamically update upstream business rules, per claims 3, 42, 81, and 83. One of ordinary skill in the art has no motivation or expectation of arriving at the claimed invention.

Applicants also note that Wiser seems to be the technical description of the non-enabled disclosure of Liquid Audio and Liquid Audio was published almost four months prior to the filing date of Wiser. Yet, Wiser is silent on a number of the key elements cited by the Examiner. There is no teaching or suggestion in Liquid Audio on how all the related systems work and that they should be dynamically updated, and thus are not enabled. It is only with improper hindsight in that the Examiner is using knowledge of the present invention to fill the gaps apparent in Liquid Audio.

*Even if Enabled, Liquid Audio Does Not Teach or Suggest Numerous Elements*

As discussed above, Applicants submit that Liquid Audio is not enabled. However, even if the Examiner maintains that Liquid Audio is enabled, Applicants submit that it does not teach or suggest all of the elements the Examiner contends it does.

The Examiner contends that Liquid Audio discloses the claimed steps from independent claims 3, 81 and 83 of “dynamically updating the predefined upstream business rule parameters, providing the one or more offers to the consumer based on the dynamically updated upstream business rule parameters ... delivering the requested information to the consumer and enabling the consumer to use the delivered information in accordance with the selected offer.” Similar elements

are recited in independent claim 42. The Examiner sets forth that he “firmly believes” that “Liquid Audio teaches the Liquid License Center enforcing licenses between the key parts of the system and the Liquid Server’s flexible design allowing the artist to send dynamic product and promotional information comprising sale price, tour schedule, discounts and coupons” (Office Action dated February 10, 2005, pages 2-3).

Applicants respectfully disagree. Again, Applicants note that the Examiner’s statement is not a summary, but a near exact quote of the entire disclosure of Liquid Audio. Liquid Audio discloses that “[t]he flexible design of the server allows you to send dynamic product and promotional information such as sales price, tour schedule, discounts and coupons; along with the Liquid Track to be received by the Liquid MusicPlayer CD” (Liquid Audio, page U-2, emphasis added).

Applicants submit that other than the use of the word “dynamic”, that there is no indication that the sales price, tour schedule, discounts and coupons are associated with “predefined upstream business rule parameters.” Upstream business rules are, for example, “those representing the relationship between the distributor, Labels and the Artists.” Specification, page 28, lines 2-3. These are contractual agreements between the parties that are involved in the creation and distribution of the electronic works and not with a consumer. The contracts between these parties change frequently and the related predefined upstream business rules must change just as frequently to match the contractual agreement between the parties. Sending a coupon does not teach or suggest an upstream business rule has changed and should or could be dynamically updated. The Examiner is using improper hindsight to contend that sending a coupon has any relation to dynamically updating business rules.

At best, the above disclosure discusses the ability of data to be sent at the same time as the electronic information. Liquid Audio is silent regarding if the “dynamic information” has anything to do with enabling the user’s access to the electronic information. Applicants submit that the sales price, discounts and coupons cannot be directly associated with the offer that provided the user the electronic information (i.e. Liquid Track) if the product and promotional information is being transmitted along with the electronic information. It is unlikely that the user is receiving sales prices, discounts and coupons for the electronic information the user already bought. Further, a tour schedule may be associated with the electronic information being transferred, (information regarding the live performance of the recorded track) but a tour schedule has no bearing on enabling the user to use the selected information.

The above interpretation is supported further in Liquid Audio, page U-12, where Liquid Audio is discussing the Liquid MusicPlayer CD and discloses that “because of the advanced database functions offered in the system, Liquid MusicPlayer CD is the only software which includes the ability to purchase and download music while accessing up-to-date promotional information such as tour schedules, coupons and special offers.” The “promotional information” is accessed “while” purchasing and downloading. Thus, Liquid Audio does not teach or suggest dynamically updating rules linked to offers, providing the offers and enabling use of selected electronic information based on the offer.

Wiser Does Not Teach or Suggest the Missing Elements

Wiser does not teach or suggest the elements lacking in Liquid Audio. Applicants respectfully submit that Wiser does not disclose or render obvious the claimed upstream business











data files is extracted by the content manager 112 from each of the master media data files and stored in the media information database 106. ... Once imported and catalogued by the content manager 112 into the media information database 106 the master media files are generally available for preview and purchasing by individual users. ... The content manager 112 receives the media data file 200 and extracts 524 the media descriptive data from it, and updates 526 the media information database 106 with a new entry for the media data file 200. The content manager 112 also stores 530 the media data file 200 in the master media data file system 120. If the 'For sale' flag 216 of the new media data file 200 is set, then the media data file 200 is ready for purchase by a consumer.

Wiser, column 5, lines 52-53; column 10, lines 48-58; column 11, lines 23-25; and column 12, lines 55-62 (emphasis added). Further, even if one of ordinary skill in the art were to misinterpret Wiser's disclosure, Wiser still does not disclose performing the step dynamically. Wiser is silent on where his "updates" come from. There is no indication that there is a constant and dynamic refresh of information just that "updates" are available. Thus, Applicants submit that Wiser does not teach or suggest the missing elements from Liquid Audio.

### Dependent Claims

Regarding claims 11 and 50, the Examiner admits the neither Liquid Audio nor Wiser teach or suggest generating rights data and the Examiner takes the position that it is obvious to one of ordinary skill in the art to generate rights data (ON1). Whether or not generating rights data is obvious, there is clearly no teaching or motivation in either reference to dynamically update the rights data.

Liquid Audio teaches that rights information can be packaged with the content in that "copyright protection [is] a standard part of the encoding process ... [including] copyright information and even rights tracking." Liquid Audio, pages U-8 and U-9 (emphasis added). Liquid Audio discloses that any rights data is encoded in the media. Thus, the entire media file would need





Regarding the dependant claims depending on the above independent claims, particularly claims 4, 8-10, 12-17, 19-29, 43, 47-49, 51-56, and 58-68 are allowable based at least on their dependence to the independent claims.

### Ginter Does Not Disclose the Elements of the Claims

There are key differences between Ginter and the present invention in claims 5 and 44. In summary, Ginter does not disclose, as part of his method, looking at an existing contract, between different parties, to settle an offer (negotiations) between two parties in the present. Ginter may arguably suggest one or more ways to create an e-contract, but does not show the claimed method and system for validating a later offer, by a different party, against an earlier contract. Claims 5 and 44 provide for a predetermined contract between a distributor and a retailer previously agreed upon. The offer is formulated, provided and exercised by the consumer. The offer is then validated against the previously agreed upon contract between the distributor and retailer.

Specifically, the claims provide an electronic contract that was previously negotiated and settled between a distributor and a retailer. The contract refers to the terms under which the retailer can distribute information. This is the electronic contract claimed in claim 5 and 44. The offer is provided to a consumer and the offer is related to the item of information. The consumer selects an offer and the offer is validated against the electronic contract.

The validation of the offer involves “*determining whether the offer is consistent with the electronic contract.*” Thus, the electronic contract is formed in advance of receiving the offer and the offer is thereafter validated against the electronic contract when a consumer is ready to make a purchase. In this way, the most up to date electronic contract is used and a consumer’s purchases







[a] method for negotiating electronic contracts, comprising: receiving a first control set from a remote site; providing a second control set; performing, within a protected processing environment, an electronic negotiation between said first control set and said second control set, including providing interaction between said first and second control sets; and producing a negotiated control set resulting from said interaction between said first and second control sets.

Ginter's first and second control sets are not electronic contracts. Both control sets are, at best, offers to sell or bids for purchase. Ginter states that:

[o]ne control set may describe a fixed ("higher") price for using the content. Another control set may describe a fixed ("lower") price for using the content with additional control information and field specifications requiring collection and return the user's personal information. ... To perform the negotiation, one party may propose a control set containing specific fields, control information, and limits as specified by a PERC [Permissions Record]; the other party may pick and accept from the control sets proposed, reject them, or propose alternate control sets that might be used. The negotiation process may use the permitted, required, and optional designations in the PERC to determine an acceptable range of parameters for the final rule set. Once an agreement is reached, the negotiation process may create a new PERC and/or URT [User Rights Table] that describes the result of the negotiation. The resulting PERCs and/or URTs may be "signed" (e.g., using digital signatures) by all of the negotiation processes involved in the negotiation to prevent repudiation of the agreement at a later date.

Ginter, column 243, line 25 to column 244, line 5. Thus, Ginter's control sets are defined, exchanged, modified and negotiated until there is an acceptable agreement between the parties. There must be an agreement about what the control set includes (the specific fields) as well as the content or terms that will constitute a match. Only when all of the terms are accepted is an electronic contract formed, which Ginter discloses as a new control set that is "signed" by the parties. The definition of the term "negotiation" as defined by Ginter, "the act of bringing together by mutual agreement" (Ginter, column 242, lines 5-6) would lead one of ordinary skill in the art to realize that a contract has not yet been formed, since one does not "bring together" parties after a contract is agreed upon.

Ginter falls short of the claimed method, which begins where Ginter ends. The claimed invention allows parties outside the distributor/retailer relationship to purchase content in accordance with the contract previously negotiated and agreed upon between the distributor and the retailer. The electronic contract is not accessed until the time of the user's request, so the most current contract is used.

Furthermore, even if Ginter suggests to one of ordinary skill in the art that three parties can negotiate a contract using Ginter's method (which Applicants submit that it does not), Ginter still falls short of the claimed invention. Using Ginter's method, the distributor, the retailer and the consumer would all send control sets to negotiate a single contract, with the consumer's control set having input into the relationship between the distributor and the retailer. All the parties would negotiate contemporaneously until an agreement is reached. There would be no need for an offer validation step because no electronic contract would be formed prior to the consumer's negotiations. Alternately, if the Examiner assumes that the distributor and retailer use Ginter's method for one contract and the retailer and the consumer use the method for another, this still falls short of the presently claimed invention. Ginter's method only negotiates with the control sets at hand, and Ginter does not teach or suggest that control sets should come from a previous contract negotiated with a different set of control sets between different parties.

Regarding claims 6-7, 45-46, 76, and 88 the Examiner states that Liquid Audio, Wiser and Ginter do not disclose providing alternate or default offers and takes the position that one of ordinary skill in the art would do so because seller "who do not have a particular product to sell as requested by a potential customer would suggest an alternative product or default offering."

Official Action dated February 10, 2005, page 14. Applicants respectfully disagree with the Examiner's characterization of the alternate and default offers.

The Examiner states that it is obvious for a seller to offer an alternative product, i.e. not the product originally selected by the user. However, this mischaracterizes both the alternate and default offers. The alternate and default offers are for the same product that the user originally selected. Due to the dynamic nature of the present invention, as reflected in the claims, the first offer provided to the consumer may not be valid at the time the user selects it. Thus, the system has multiple offers, in which if the first offer is not validated, the alternate or default offer is presented to the consumer. The Specification, page 48, line 22 to page 49, line 8, states that:

In the event that the consumer selects an offer that has expired, the consumer will be offered a choice of valid offers. Selecting an expired offer may arise when the consumer clicks on a locally stored reference describing a timed-out offer to a previously downloaded content. When the Consumer Player in conjunction with the RMS checks the offer, it is then determined that the offer has expired. The consumer is then offered a choice to use the content's Default Offer or attempt to find another offer from the same retailer. If the consumer chooses the Default offer, the content is purchased with the Default Offer. If the consumer chooses to find a substitute, the Consumer Player messages the Reference Service which finds a substitute offer from the same retailer. In either case, the Consumer receives a valid offer.

This is very different from offering a different product all together and is not obvious to one of ordinary skill in the art of virtual retail.

Further, if the Examiner maintains that providing different offers for the same content once an offer has failed to be validated, Applicants respectfully submit that Wiser teaches away from this concept. Wiser only discloses only the situation where the consumer selects an item of content and the content is not present (since Wiser does not disclose offers). If the content is not present, the only step Wiser takes is to report an error message to the consumer. Wiser repeats this multiple times for each problem encountered with delivering content to the consumer. Specifically,

The content manager 112 receives the preview request, and validates 706 that media data file 200 specified by the media ID exists. ... If the requested media ID ... [and] media data file 200 is not present here, the content manager 112 returns an error. ... When a delivery server 118 allocates a stream then, it updates the content manager 112 with this information. ... If no streams are available, then the content manager 112 returns a message to the Web browser 128 indicating that the preview cannot be delivered at the present time. ... The content manager 112 looks up the received media ID in the media information database 106 to confirm 918 that the requested song exists and is available for purchase. If the media data file 200 ... [does not exist] the content manager 112 returns a message indicating the media ID does not correspond to a known media data file 200 or that the corresponding file is not available for sale; this information is communicated back to the Web browser 128.

Wiser, column 14, lines 52-60; column 15, lines 10-18; and column 17, lines 7-16.

Regarding claims 34-36, 73-75, and 87, Ginter does not teach or suggest certifying candidate offers and converting them to certified offers. Specifically, the claims provide an electronic contract/upstream business rules previously negotiated and settled between a content owner/distributor and a retailer. The contract/rules refer to the terms under which the retailer can distribute content. A candidate offer is related to the content and can be created by the retailer.

The certification of the candidate retail offer involves “determining if the candidate retail offer is consistent with an electronic contract [or] an upstream business rule.” Thus, the electronic contract/business rule is formed in advance of receiving a candidate offer and the candidate offer is thereafter validated against the electronic contract/business rule. Ginter does not disclose or suggest previous agreements or terms being accessed for certifying an offer, so that an offer for a consumer (a third party) can be certified and processed to allow the consumer to receive and use the item of electronic content.

Regarding dependent claims 30-33, 37, 69, and 71-72, they are allowable based on the independent claims from which they depend


Thus, Liquid Audio, Wiser, Ginter, and/or the Examiner's Official Notices do not, alone or in combination anticipate or render obvious all the elements of claims 3-37, 42-76, 81, 83, and 85-88. Further, Liquid Audio, Wiser, and/or Ginter teach away from specific elements, as outlined above. Accordingly, Applicants respectfully request that the above rejections be withdrawn.

## CONCLUSION

In view of the above amendments, applicant believes the pending application is in condition for allowance.

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